

Customs Bulletin

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concerning Customs and related matters



and Decisions of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Proposed Rulemaking

19 CFR Part 4

Proposed Customs Regulations Amendments Relating to Manifesting Empty Cargo Containers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to simplify current procedures for manifesting empty cargo containers carried by vessels in foreign and domestic trades. To implement the new alternative manifesting procedure, it is proposed to allow empty containers to be listed on a separate sheet of paper rather than on the inward foreign manifest. Further, the sheet of paper would identify only the total number of containers; not the marks and numbers of each container. Pen and ink corrections could be made to the listing in place of filing a diversion report and having it approved. If adopted, the amendments would expedite the handling of empty containers, reduce the paperwork burden for Customs and container carriers, and eliminate the problems carriers are experiencing with the current manifest requirements.

DATE: Comments must be received on or before April 23, 1984.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229. Comments relating to the information collection aspects of the proposal should be addressed to the Commissioner of Customs, as noted above, and also to the Office of Information and Regulatory Affairs, Attention: Desk Officer for U.S. Customs Service, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Donald Reusch, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 401(c), Tariff Act of 1930, as amended (19 U.S.C. 1401(c)), defines the term "merchandise" as "goods, wares, and chattels of every description." Section 431, Tariff Act of 1930, as amended (19 U.S.C. 1431), provides that every vessel arriving in the United States shall have on board a manifest which, among other things, shall contain "a detailed account of all merchandise on board such vessel", with the marks, numbers, and description of each package. Because empty containers are considered merchandise, they must be manifested. The manifest requirements are set forth in sections 4.7 and 4.7a, Customs Regulations (19 CFR 4.7, 4.7a).

Under current procedures for manifesting empty containers, as set forth in Customs Manual Supplement No. 3276-01, dated September 10, 1980, the complete inward foreign manifest (traveling manifest) presented at the vessel's first domestic port of arrival is required to contain a listing of all empty containers on board by their marks and numbers and show their destination as the last domestic port on the vessel's itinerary. Diversions of empty containers to ports other than the port shown on the traveling manifest could then be permitted pursuant to the procedures set forth in section 4.33(c), Customs Regulations (19 CFR 4.33(c)). Due to the necessities of commercial vessel operation, container carriers reportedly are having serious problems satisfying these requirements. These problems are most prevalent with empty containers on board vessels arriving from foreign ports manifested for discharge at one or more United States ports, and those containers already in the United States being moved from one port to another as instruments of international traffic incidental to their use in international commerce. Both foreign and United States-flag container vessels often arrive in the United States with empty containers to be unladed at various ports. The containers are often filled with export cargo and subsequently reloaded aboard a container vessel to be carried to a foreign country. Due to the exigencies of the shipping trade, frequently, before the vessel departs for another United States port, additional empty containers, in excess of the manifested quantity, are unladed at that port. Similarly, the vessel may not unlade as many empty containers as are listed for that port on the traveling manifest.

If the carrier does not have sufficient time to amend the traveling manifest, this manipulation of empty containers, which often occurs outside of regular business hours, often results in the assessment of penalties because the manifest is incorrect. This is especially true with respect to correctly listing the individual marks and numbers of the containers. At times carriers may refuse to unlade empty containers in excess of the manifested quantity in order to avoid being assessed penalties, which is costly and burdensome on their operations.

To eliminate these problems, it is proposed to implement a simplified procedure for manifesting empty containers. This would be accomplished by allowing empty containers arriving in vessels from foreign ports and empty containers already in the United States being moved as instruments of international traffic, to be listed on a separate sheet of paper identified as a "Cargo Declaration Limited to Empty Containers" which would be attached to the traveling manifest rather than requiring empty containers to be identified on the traveling manifest. The listing on the separate sheet of paper would identify only the total number of containers; not the marks and numbers of each container as is presently required. The diversion of empty containers to ports other than the ports shown on the listing could be done by an authorized representative of the vessel during the voyage to the next port in lieu of filing a diversion report under section 4.33(c), Customs Regulations (19 CFR 4.33(c)), with the appropriate Customs officer and having it approved.

To implement the new procedure, the following amendments would be made to Part 4, Customs Regulations (19 CFR Part 4). Section 4.7a(c), Customs Regulations (19 CFR 4.7a(c)), relating to cargo requirements for inward foreign cargo, would be amended by adding a new subparagraph (4) to paragraph (c), to allow empty containers to be manifested on a separate sheet of paper by their quantity only.

Section 4.85, Customs Regulations (19 CFR 4.85), relating to vessels with residue cargo (e.g., empty containers) for domestic ports, would be amended by adding a new paragraph (f) to require the separate sheet of paper to become part of and accompany the traveling manifest. Also, in the case of diversions of containers to ports not listed on the traveling manifest, the vessel representative would be allowed to make the appropriate pen and ink corrections to the separate listing on the sheet of paper at each port where the containers are unloaded.

Section 4.93(c), Customs Regulations (19 CFR 4.93(c)), relating to the coastwise transportation of empty containers of international traffic, would be revised by including the proposed listing requirement on a separate sheet of paper as an alternative to manifesting requirements set forth in section 4.93(c) and section 4.81(e), Customs Regulations (19 CFR 4.81(e), 4.93(c)).

If adopted, these amendments would expedite the handling of empty containers, reduce the paperwork burden for Customs and container carriers, and eliminate the problems carriers are now experiencing with the current manifest requirements.

EXECUTIVE ORDER 12291

This document will not result in a regulation which is a "major rule" as defined by section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the proposed amendments are not expected to have significant effects on a substantial number of small entities or impose or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. On the contrary, they are expected to reduce the paperwork burden for Customs and the affected carriers, and consequently, reduce operating costs.

Accordingly, it is certified under the provisions of section 3, Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities.

PAPERWORK REDUCTION ACT

The document is subject to the Paperwork Reduction Act. Accordingly, the listing requirements contained in the document have been submitted to the Office of Management and Budget for review and comment pursuant to 44 U.S.C. 3504(h). Public comments relating to the information collection aspects of the proposal should be addressed to the Customs Service and to the Office of Management and Budget at the addresses set forth in the ADDRESS portion of this document.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

AUTHORITY

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), sections 431, 432, 439, 624, 46 Stat. 710, as amended, 712, 759 (19 U.S.C. 1431, 1432, 1439, 1624).

DRAFTING INFORMATION

The principal authors of this document were Jesse V. Vitello and John E. Elkins, Regulations Control Branch, Office of Regulations & Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 4

Cargo manifest, Customs duties and inspection, empty containers, imports, inspection and control, residue cargo, vessels.

PROPOSED AMENDMENTS

It is proposed to amend Part 4, Customs Regulations (19 CFR Part 4), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. It is proposed to amend section 4.7a(c) by adding a new subparagraph (4) to read as follows:

4.7a Inward manifest; information required; alternative forms.

* * * * *

(c) *Cargo Declaration.* * * *

(4) As an alternative to the manifesting procedures described in this section, if the merchandise consists, in whole or in part, of empty containers, the containers may be manifested on a separate sheet of paper, which may be typed or printed, and identified as a "Cargo Declaration Limited to Empty Containers." The "Cargo Declaration Limited to Empty Containers" shall list (i) the name of the vessel, (ii) the port of entry, (iii) the flag of the vessel, (iv) the name of the master, (v) the port of lading of the empty containers, and (vi) the port of ultimate discharge of the empty containers. Only the total number of empty containers entered for each port in the United States shall be listed. The marks and numbers of each empty container shall not be listed.

2. It is proposed to amend section 4.85 by adding a new paragraph (f) to read as follows:

4.85 Vessels with residue cargo for domestic ports.

* * * * *

(f) The separate sheet of paper identified as a "Cargo Declaration Limited to Empty Containers" shall be considered part of and shall accompany the traveling manifest. When empty containers are manifested on a "Cargo Declaration Limited to Empty Containers" in accordance with section 4.7a(c)(4), and there is a change in the number of containers on board the vessel when it proceeds to the next and each succeeding port in the United States from the port of first arrival, the vessel representative shall indicate the actual number of empty containers still on board the vessel by pen and ink notation to the listing. When delivered to the district director at the next succeeding domestic port with the traveling manifest, the listing with the pen and ink notations, shall be considered a sufficient correction, if any is necessary, of the "Cargo Declaration Limited to Empty Containers" presented at the first port. If the

total number of empty containers listed on the "Cargo Declaration Limited to Empty Containers" and presented in accordance with section 4.7a is accounted for by the pen and ink notations on the listing when it is surrendered at the final domestic port in accordance with paragraph (e), no controls such as a report of diversion or overage or shortage report shall be required and no penalty action relating to any empty containers shall be taken. If at any time Customs officers determine by inspection that a container listed on a "Cargo Declaration Limited to Empty Containers" is not empty, or determine that the actual number of empty containers discharged at any port is more or less than the number indicated (with pen and ink notations) as discharged at the port, appropriate penalty action shall be taken.

3. It is proposed to amend section 4.93 by adding two new sentences at the end of paragraph (c) to read as follows:

4.93 Coastwise transportation by certain vessels of empty vans, tanks, and barges, equipment for use with vans and tanks; empty instruments of international traffic; stevedoring equipment and material; procedures.

* * * * *

(c) * * * As an alternative to the above manifesting requirement and section 4.81(e), if the merchandise consists of empty containers, they may be manifested at the domestic port of lading on a separate sheet of paper, identified as a "Cargo Declaration Limited to Empty Containers" in the manner described in section 4.7a(c)(4). The separate listing shall be delivered to Customs at domestic ports of unloading in accordance with section 4.85(f).

ROBERT P. SCHAFER,
Acting Commissioner of Customs.

Approved: November 30, 1983.

JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, February —, 1984 (49 FR 23/6747)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

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Decisions of the Court of International Trade

Abstracts

The following abstracts of decisions of the United States Court of International Trade are published for the information and guidance of officials of the Customs and Border Protection. Decisions are not of sufficient general interest to publish in full to Customs officials in easily locating cases and tracing the law.

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Abstracts

and Protest Decisions

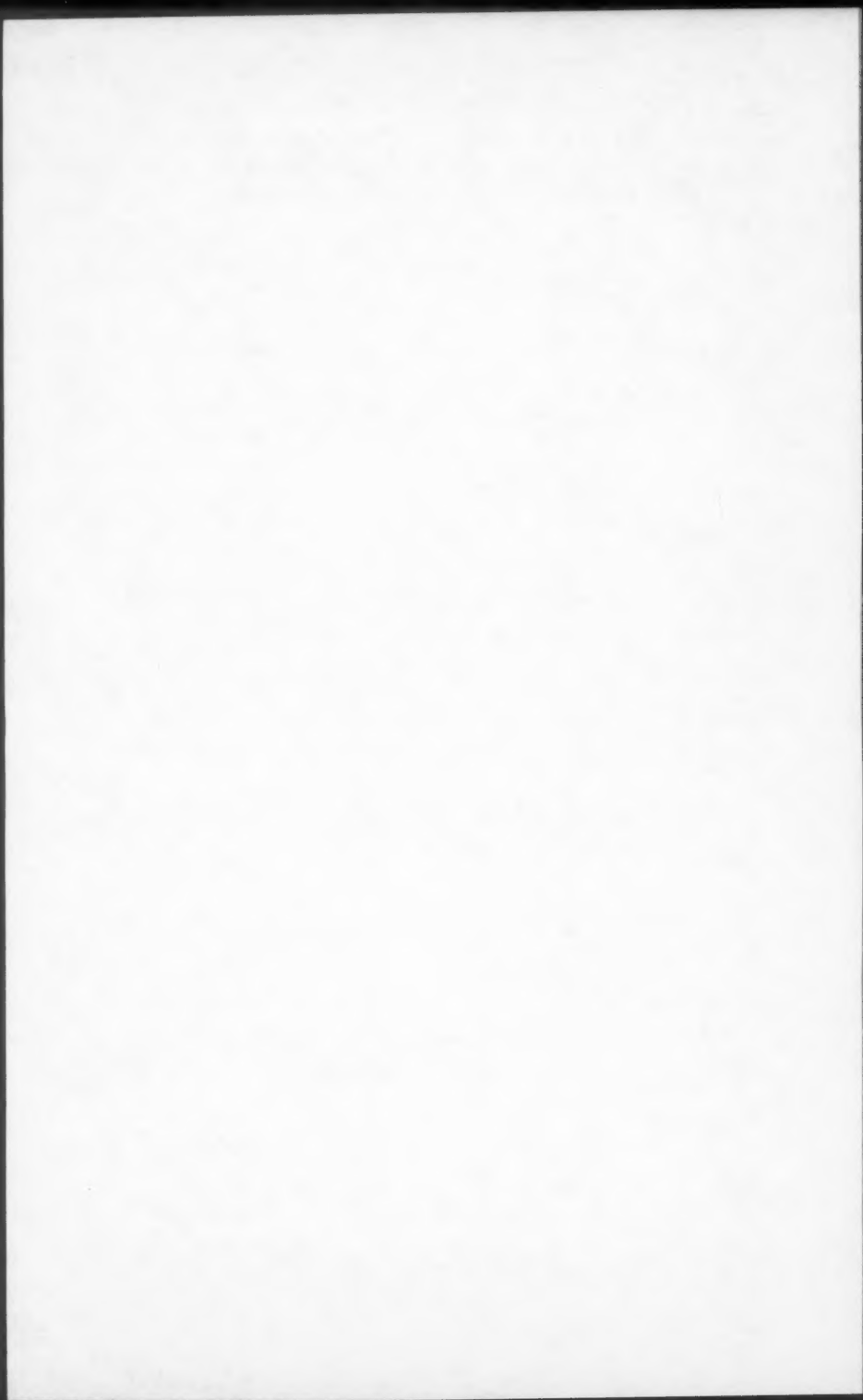
DEPARTMENT OF THE TREASURY, *February 16, 1984.*

United States Court of International Trade at New York are officers of the Customs and others concerned. Although the to print in full, the summary herein given will be of assistance tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSMENT
				Item No. 1
P84/21	Restani, J. February 8, 1984	Metallurg, Inc.	82-4-00470	Item 632.8 9% Item 632.8 8.6% (Except with respect to No. 1646 which is and dism

ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
Item No. and Rate	Item No. and Rate		
Item 632.84 4% Item 632.88 1.6% except with respect to entry No. 164697 which is severed and dismissed)	Item 606.22 4%	Agreed statement of facts	Philadelphia Low carbon ferrochromium



Decisions of the Court of International Trade

Abstracts *Abstracted Reappraisals*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
R84/47	Re, C.J. February 8, 1984	Mitsui & Co. (USA), Inc.	82-3-00369	Export value
R84/48	Carman, J. February 10, 1984	Mitsui & Co. (USA), Inc.	82-10-01374	Transaction value

the United States International Trade

Abstracts

Appraisement Decisions

N	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	San Francisco Not stated
ue	Invoice unit price from foreign seller, less non-dutiable charges, net, packed	Judgment on the pleadings	New York Photo grade hydroquinone

Appeal to the U.S. Court of Appeals for the Federal Circuit

84-814—The Ambassador Division of Florsheim Shoe *v.* United States—SHOES—Appeal from Slip Op. 83-125, filed on January 27, 1984.

83-1341—Manufacture De Machines Du Haut-Rhin *v.* William von Raab, Commissioner of Customs, U.S. Customs Service and International Armament Corporation—TRADEMARK INFRINGEMENT-TARIFF ACT 1930—Appeal from Slip Op. 83-77, filed on August 25, 1983; DISMISSED, on Appellees' Motion to Dismiss for Failure of Appellant to File its Brief.



DEPARTMENT OF THE TREASURY
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